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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. ~~829~~ 91.

ALFONSO BATTAGLINO,
Petitioner,

v.

GEORGE C. MARSHALL, Secretary of State of the United States.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

WILLIAM CANTON and JOSEPH F. RUGGIERI,
Attorneys for Petitioner, Alfonso Battaglino.

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petitioner Alfonso Battaglino respectfully prays that a writ of certiorari issue to review the order and judgment of the United States Court of Appeals for the Second Circuit entered in the above cause on March 3, 1949, reversing the judgment of the District Court for the Eastern District of New York declaring the petitioner an American citizen.

Opinions Below.

The opinion of the Court of Appeals for the Second Circuit is not yet reported but is printed in the Record at pages 48-53.

The opinion of the District Court is unreported but is printed at R. 35-40.

Jurisdiction.

The judgment of the Court of Appeals was entered on March 3, 1949.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended, 28 U. S. C. 347(a).

Questions.

1. Was petitioner deprived of his derivative citizenship as of the date of his birth by the cancellation for presumptive fraud of the certificate of citizenship of his father, under the provisions of Sec. 15 of the Naturalization Act of June 29, 1906 (34 Stat., 596, 601); and before the Nationality Act of 1940, 54 Stat. 1158; 8 U. S. C. 738 (c), became effective.

2. Did the cancellation of the citizenship of the father of petitioner make the naturalization void and the certificate a nullity ab initio.

3. Was not the citizenship of the father of petitioner valid at the time issued and up to the date when his citizenship was cancelled.

4. Did the subsequent acts or omissions of the father of petitioner affect the citizenship of petitioner which had a valid inception and was vested and choate as of the time of the cancellation of his father's citizenship.

5. Is the presumptive fraud created under the Act the same in its effect and scope as that of actual fraud perpetrated in obtaining citizenship.

6. Was there a patent ambiguity in the Act of 1906 with respect to its omission concerning the effect of a cancellation on derivative rights of citizenship already vested at the time of such cancellation.

7. Did the Court of Appeals err in assuming that the fraud consisted in the false representation that the father intended to become a permanent citizen when the record is devoid and there is no proof that such a representation was made, either in the father's application for citizenship or by subsequent act in leaving this country in 1897 within five years of obtaining his citizenship, when it appears from the record R. 33 that the father returned to this country in 1900 and resided here for six more years so that the evidence of a lack of intention to become a permanent citizen was necessarily rebutted by his return in 1900 and residence in this country until 1906.

Statute Involved.

The pertinent provisions upon which the cancellation was predicated are found in the second paragraph of Section 15 of the Naturalization Act of June 29, 1906,* (34 Stat. 596, 601; 8 U. S. C. 405) which provided as follows:

> "* * * If any alien who shall have secured a certificate of citizenship under the provisions of this chapter shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the

* Repealed by the Nationality Act of 1940 and reenacted substantially as Section 338 (c) of the latter Act, 54 Stat. 1158; 8 U. S. C. 738 (c).

United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship."

Statement.

The petitioner, Alfonso Battaglino, brought suit for a declaratory judgment (a) declaring him to be a citizen of the United States and (b) ordering defendant not to deny a passport to petitioner as a citizen of the United States on the sole ground that he is not a citizen of this country.

After joinder of issue, petitioner moved for summary judgment, and defendant filed a similar motion. The court thereafter granted petitioner's motion for summary judgment for the relief demanded in the complaint without an injunction and an order was entered thereon declaring the petitioner to be a citizen of the United States as of November 26, 1898, the date of his birth, and denying the defendant's motion to dismiss the complaint.

Upon appeal, by the defendant to the United States Court of Appeals for the Second Circuit, the judgment of the District Court was reversed with directions to dismiss the complaint and grant the defendant's motion for summary judgment.

The facts out of which this suit for declaratory judgment was instituted may be summarized as follows:

Alfonso Battaglino, the petitioner herein, was born in Italy on November 26, 1898, and arrived in the United States on August 17, 1924, on a United States passport, duly issued to him as a citizen of the United States by the American Consul in Naples, Italy, on August 13, 1923. Antonio Battaglino, the father of petitioner had been naturalized October 31, 1893, in the Court of Common Pleas of Essex County, N. J. In 1897 he went back to Italy remaining there until 1900, during which time he married and his son, Alfonso, the petitioner herein, was born. In 1900, the father returned to this country remaining here for some six years. He went back to Italy again in December, 1906, remaining there until his death.

In May 1925, his naturalization was cancelled pursuant to the provisions of Sec. 15 of the Act of June 1906, on the ground that he had established a permanent residence in Italy within five years after his naturalization.

In 1946 petitioner applied for a U. S. passport, which was refused him on the grounds that he was not an American citizen as the result of the cancellation of the citizenship of his father and, therefore, not entitled to an American passport, although petitioner had steadfastly since his arrival in this country held himself out as a citizen and exercised without question the privileges of citizenship and assumed its duties and obligations in all respects. R. 25, 26, 27, 28, 29, 30.

The Present Litigation.

The Court of Appeals in reversing, held, first, that as a matter of law, petitioner was deprived of his derivative citizenship by the cancellation for presumptive fraud of

the certificate of citizenship of his father, under the provisions of Sec. 15 of the Act of 1906, *supra;* second, that the cancellation of the citizenship of the father of petitioner made the naturalization void and a nullity ab initio; third that there is no distinction between actual fraud in obtaining citizenship, and the presumptive fraud created by the Act, and that the effect and scope of presumptive fraud is similar to that of actual fraud.

It is our contention that the Court of Appeals has demonstrably erred on each of these grounds; that its decision is based upon the erroneous fundamental premise that there is no distinction between actual fraud in gaining citizenship and the presumptive fraud created by the terms of the Naturalization Statute of 1906; that the subsequent annulment of citizenship valid in its inception destroys rights created thereunder; that a change in the status of petitioner's parent invalidates citizenship acquired at birth by petitioner.

We contend that the decision of the Court of Appeals, because of these errors, probably conflicts with applicable decisions of this Court; that this Court has never ruled on the effect on derivative rights of citizenship of a cancellation of citizenship under the Act of June 29, 1906; that this is an important question of federal law involving the interpretation and construction of this federal statute and one which should be settled by this Court.

Specification of Errors to be Urged.

The Court below erred

(1) in holding that the petitioner lost his derivative citizenship as a result of the cancellation in 1925 of the citizenship of his father for presumptive fraud;

(2) in ruling that the cancellation of the citizenship of the father of petitioner annulled the certificate of citizenship and made such citizenship void ab initio;

(3) in deciding that there is no distinction between actual fraud in procuring citizenship and the presumptive fraud recognized by the Naturalization Act of 1906;

(4) in holding that although the citizenship of petitioner was valid in its inception, vested and choate as of the time of the cancellation of the citizenship of the petitioner's father, nonetheless petitioner's citizenship must be held to have been annulled as of the date of his birth;

(5) in deciding that the citizenship of the father was invalid as of its origin as a result of the annulment of the citizenship rather than as of the date when his citizenship was cancelled;

(6) in holding in support of its decision that the law controlling the appeal was changed by the terms of Sec. 338 (d) of the Nationality Act of 1940,* 8 U. S. C. A. Sec. 738 (d) which states, *inter alia,* that cancellation for presumptive fraud shall not result in the loss of derivative citizenship of a wife or minor child of the naturalized person, but the citizenship of said wife or minor child shall

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* (d) The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 338 shall not, where such action takes place after the effective date of this Act, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or available to a wife or minor child of the naturalized person had such naturalization not been revoked, but the citizenship and any such right or privilege of such wife or minor child shall be deemed valid to the extent that it shall not be affected by such revocation: *Provided,* That this subsection shall not apply in any case where the revocation and setting aside of the order was the result of actual fraud.

be deemed valid to the extent that it shall not be affected by such revocation: Provided that this subsection shall not apply in any case where the revocation was the result of *actual fraud* (italics ours), and thereby changed the existing law; *whereas it is apparently the reverse of this contention in that this Section merely enacted into statutory law the decisions construing the second paragraph of Section 15 of the Naturalization Act of 1906.*

Reasons for Granting the Writ.

1. The fundamental premise of the Court of Appeals here was that the petitioner lost his citizenship as a result of the subsequent annulment in 1925 of his father's certificate of citizenship. This conclusion conflicts with the principles of *Perkins* v. *Elg,* 307 U. S. 325, in which this Court ruled that a child could not be deprived of his citizenship solely because of a subsequent change in the status of his parent. See also *Ex parte Gilroy,* 257 Fed. 110.

The Court of Appeals failed to recognize that the grant of citizenship to the father of petitioner having been valid in its inception, its subsequent annulment did not invalidate its origin nor should it impair rights which accrued thereunder. *United States* v. *Eliasen,* 11 F. (2d) 785. It is conceded that the father's citizenship was valid in its inception and continued valid until annulled by the government.

The petitioner having assumed all of the obligations, privileges and prerogatives of American citizenship (R. 25, 26, 27, 28, 29, 30) and having had all of the rights of citizenship conferred on him, such citizenship should not be taken away without the clearest sort of justification and proof. As this Court so aptly stated in *Schneiderman* v. *United States,* 320 U. S. 118, 122, 123, "Especially is this

so when the attack is made long after the time when the certificate of citizenship was granted and the citizen meanwhile has met his obligations and has committed no act of lawlessness".

Had the citizenship of the petitioner's father been obtained by *actual fraud*, there is no question that the government would have the power to annul "merely colorable letters of citizenship to which their possessors never were lawfully entitled". *Johannessen* v. *United States*, 225 U. S. 227; *Rosenberg* v. *United States* (3 Cir.), 60 F. (2d) 475. However, there was a valid inception to the citizenship of the father of petitioner and consequently these cases are inapplicable. While this Court in *Luria* v. *United States*, 231 U. S. 9, did decide that the provisions of the second paragraph of Sec. 15 of the Naturalization Act of June 29, 1906 are constitutional in that under this Act the government has the power to cancel citizenship for presumptive fraud, nevertheless, this Court has never decided the effect of such cancellation on derivative rights of citizenship that were vested for a considerable time before the cancellation took effect.

Furthermore, the facts in the *Luria* case point to the definite conclusion that the plaintiff in that case had in all probability never sincerely adopted the oath of allegiance when he assumed his citizenship. For it appears that approximately four months later Luria left the United States for South Africa where he resided and practiced medicine for some sixteen years; that his only return to the United States, after thirteen years of residence and practice in South Africa, was for four or five months for the temporary purpose of taking a postgraduate course in a medical school.

The Court should note that in the instant case, *there was actually countervailing evidence to rebut the presumption of a lack of intention on the part of the father to become a*

permanent citizen since it appears that the father of the petitioner returned to this country in 1900 and resided here until 1906. Consequently, it is evident that there was no intention on the part of petitioner's father to take permanent residence in his native country within five years after the issuance of his certificate of naturalization. See *U. S.* v. *Knight* (9 Cir.) 299 F. 571; *Perrone* v. *U. S.* (3 Cir.) 26 F. (2d) 213. Further, so far as is known, the father never received any actual notice of the proceedings to cancel his citizenship, which was voided by a decree based on publication of process.

2. The erroneous premise of the Court of Appeals that the presumptive fraud requires a cancellation ab initio of the citizenship of petitioner is an unwarranted extension of any principles laid down by the *Johannessen* and *Luria* cases *supra.*

Generally, fraud renders transactions voidable, In *re Bowen* (3 Cir.) 130 F. (2d) 22, 23, cert. denied, *Baker* v. *United States,* 320 U. S. 799; *United States* v. *Sillman* (3 Cir.) 167 F. (2d) 607, 612; *Akers* v. *Scofield,* C. C. A. 167 F. (2d) 718, and until avoided the transaction continues valid, 17 C. J. S. Sec. 166. Had the father's certificate been cancelled by reason of any actual fraud, such a naturalization would have been a nullity and obviously vitiated any rights founded upon such naturalization. *Johannessen* and *Rosenberg* cases *supra.* There are no cases which go so far as to *cancel ab initio* any citizenship of children who became citizens at their birth by virtue of the provisions of Sec. 1993 of the Revised Statutes.* In fact all of the cases in

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* Section 1993 of the Revised Statutes of the United States (Comp. Stat. Sec. 3947) provided as follows: All children heretofore born or hereafter born out of the limits and jurisdiction of the United States whose fathers were or may be at the time of their birth citizens thereof are declared to be citizens of the United States, * * *. 2 Stat. 155; 8 U. S. C. 6, repealed by Section 504 of the Nationality Act of 1940, which preserved nationality theretofore lawfully acquired, 8 U. S. C. 904.

which this issue was involved are all contra.* *Ex parte Gilroy, supra,* In *re Findan,* 4 F. Supp. 189; *Haaland* v. *Attorney General,* 42 F. Supp. 13; In *re Bolter,* 66 F. Supp. 566. In both the *Findan* and *Bolter* cases, the Courts in deciding factual situations exactly like that in which the petitioner finds himself, held that the presumptive fraud of the 1906 Act did not destroy *ab initio* citizenship rights already vested and choate. The Court in deciding this issue cited in support of its ruling *Schneiderman* v. *United States,* 320 U. S. 118, 122, 123, and *Lau Ow Bew* v. *United States,* 144 U. S. 47, 59, 12, S. Ct. 517, 520, 36 L. Ed. 340.

Had the father of petitioner *illegally or fraudulently procured* his certificate of citizenship, then under the elementary principles of the law of fraud, he would have never validly become a citizen, and consequently any derivative rights of citizenship would necessarily be null and void. A cancellation on such grounds would, of course, be a cancellation *ab initio.* However, the distinction to be drawn is that there having been a valid inception to the father's citizenship in 1893, its subsequent annulment thirty-two years later for presumptive fraud, which came into being by virtue of the Act of 1906, could not invalidate the origin, or impair the rights of citizenship of the petitioner which had already accrued in 1898 and become vested and choate in 1923 when he took the oath of allegiance as an American citizen.

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* The status of a foreign born person as an American citizen because of previous naturalization of his father was to be determined in accordance with requirements of such laws as were in effect at the time of the person's birth, and subsequent related events, where the person was born before adoption of the Nationality Act of 1940, Nationality Act of 1940, Sec. 201 (c), 313, 347, 407, 8 U. S. C. A. Sec. 601 (c), 713, 747, 807. See *Perkins* v. *Elg,* 307 U. S. 325, 59 S. Ct. 884; *Schaufus* v. *Attorney General,* 45 F. Supp. 61, D. C. Md. (1942), *Ex parte Gilroy* and *In re Findan, supra.*

Nor is this a situation where "Congress may provide for the cancellation of certificates of naturalization on the ground of fraud in their procurement and thus protect the courts and the nation against practices of aliens who by deceitful methods obtain the cherished status of citizenship here the better to serve foreign masters". *Knauer* v. *United States,* 328 U. S. 654, 673, 674. There was no fraud in procuring citizenship in the case at bar.

The Court *In re Bolter, supra,* in discussing this matter stated (p. 567):

> "Hannah Bolter has filed her petition to be naturalized as a citizen of the United States pursuant to Sec. 310(a) of the Nationality Act of 1940. The petition is predicated upon petitioner's claim that she is an alien who, after Sept. 21, 1922, and prior to May 24, 1934, has married a citizen of the United States * * *." Title 8, U. S. C. A. Sec. 710(a).

The Court recited here Section 1993 governing at the date of birth of petitioner's husband, Jack Bolter:

> "The plain wording of the statute just quoted makes it manifest that, since his father was admittedly a citizen in December of 1903, Jack Bolter was born a citizen of the United States. See: Citizenship of the U. S. Expatriation and Protection Abroad, Document No. 326, page 78, 39th Congress, 2nd Session.
>
> Moreover, that status acquired by birth was recognized 20 years later when he was issued a passport and permitted to enter the United States for permanent residence as an American citizen, and to vote and otherwise exercise the rights of citizenship.
>
> It is conceded that Bolter himself has not done or omitted to do any act which could lawfully deprive him of the American citizenship which descended to him by operation of law at birth."

The Commissioner of Immigration urged in this case that cancellation in 1929 of the citizenship of Bolter's father operated *ipso facto* to deprive Bolter of his long enjoyed status of an American citizen.

Continuing the Court stated (p. 568):

> "Thus in the language of *Schneiderman* v. *United States* (1942), 320 U. S. 118, 122, 123, 63 S. Ct. 1333, 1335, 87 L. Ed. 1796, the government seeks to deprive him of the priceless benefits that derived from that status. In its consequences it is more serious than a taking of one's property, or the imposition of a fine or other penalty. For it is safe to assert that nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country. It would be difficult to exaggerate its value and importance. By many it is regarded as the highest hope of civilized men • • • such a right once conferred should not be taken away without the clearest sort of justification and proof. • • • the facts and the law should be construed as far as is reasonably possible in favor of the citizen.
>
> (4) As was observed in *Lau Ow Bew* v. *United States*, 1892, 144 U. S. 47, 59, 12 S. Ct. 517, 520, 36 L. Ed. 340: 'Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislation intended and, if possible, so as to avoid an unjust or absurd conclusion.' This admonition would seem to have especial application where, as here, choice of one possible construction would operate to change a citizenship status of long standing without any act or omission on the part of the person whose status would thus be changed. *Haff* v. *Yung Poy*, 9th Cir., 1933, 68 F. (2d) 203, 205.

(P. 569):

> But there can be no doubt that Jack Bolter was 'born an American citizen'. *Ex parte Gilroy*, D. C.

N. Y. 1919, 257 Fed. 110, 116. It is equally beyond dispute that he retained that status and was recognized as an American citizen during the following 25 years and more—until his father's citizenship was cancelled in 1929.

It is also conceded that the father's certificate was not cancelled by reason of any actual fraud, which would have rendered his naturalization a nullity. *Cf. Rosenberg* v. *U. S.*, 3 Cir., 60 F. (2d) 475.

(5) Precedent holds that when born an American citizen, a child does not *ipso facto* lose that status merely by reason of change in the status of the parents. *Perkins* v. *Elg*, 1938, 307 U. S. 325, 329, 344, 59 S. Ct. 884, 83 L. Ed. 1320; *Haaland* v. *Attorney General*, D. C. Md., 1941, 42 F. Supp. 13, 21; *In re Findan*, D. C. R. I., 1933, 4 F. Supp. 189, 190.

To paraphrase the language of *Perkins* v. *Elg*, *supra*, 307 U. S. 325 at page 329, 59 S. Ct. 884, 83 L. Ed. 1320: As at birth Jack Bolter became a citizen of the United States, that citizenship must be deemed to continue unless he has been deprived of it through the operation of a treaty or Congressional enactment or possible voluntary action in conformity with applicable legal principles. *Cf. Schaufus* v. *Attorney General*, D. C. Md., 1942, 45 F. Supp. 61. *Obvious considerations would seem to call for an unequivocal expression if Congress desires to legislate a different result.*" (Italics added.)

It would seem that the reasoning and logic of the foregoing is most apposite. To hold otherwise would result in a harsh, illogical, unjust, and inequitable ruling.

3. In support of its reasoning, the Court of Appeals states that Congress did in the Naturalization Act of 1940 soften the effect prospectively of cancellation of certificates of citizenship upon those claiming derivatively under them.

It concedes that since that Act, by virtue of Sec. 338 (d), 8 U. S. C. A. Sec. 738 (d), cancellation for presumptive fraud does not result in the loss of citizenship of the wife or minor child of the naturalized person. The Court of Appeals held that this provision came too late to be of aid to petitioner. "Its only significance, if it has any at all, would be to emphasize that the law controlling this appeal was thereby changed." R. 53. However, no cases nor any authority whatsoever in support of this proposition have been cited by the Court of Appeals. All of the cases decided involving an interpretation and construction of the effect of cancellation under the 1906 Act are all *contra* and support a reverse proposition. It is more than likely that in the words of Mathes, D. J., *In re Bolter, supra,* p. 567, Congress enacted this provision out of an "abundance of caution" to eliminate any doubts whatsoever on this score, and for the purpose of enacting into the statute the decisions of courts and the thinking of Congress on this subject. See Hearings Before the Committee on Immigration and Naturalization, House of Representatives, 76th Congress, 1st Session, on H. R. 6127, superseded by H. R. 9980—A Bill to Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code, pp. 312, 313.

The anomalous result reached by the Court of Appeals in depriving the petitioner of his citizenship conflicts directly with the holding of this Court in *Baumgartner* v. *United States,* 322 U. S. 665, 679 "American citizenship is not a right granted on a condition subsequent". In effect this is the decision of the Court of Appeals.

A free and secure society abjures all forms of limited citizenship. The ruling of the Court of Appeals makes the son, the petitioner herein, the keeper of his father. Are the sins (*sic,* the acts and omissions) of the father to be visited on the son? *Perkins* v. *Elg, supra.* At what stage

in the life of the son can he claim a secure and untrammelled citizenship, or is his citizenship to be of a second class variety forever dependent upon the conduct of his father no matter how long ago his citizenship rights were vested?

The Court in *Haaland* v. *Attorney General*, 42 F. Supp. 13 answered logically a point that should be followed if decisions affecting the status of citizens born abroad of an American parent are not to become so complicated as to lead to confusing and inequitable results respecting the status of many persons. In commenting on the right to citizenship of persons born outside of the United States, the court stated (p. 19):

> "While it is true that petitioner's right to citizenship is derivative in that it must stand or fall upon his father's status and not upon his own at the time of birth, nevertheless, we feel that in the present circumstances, petitioner should not be and is not required by law to be placed in a less favorable position as respects his assertion of citizenship than are persons born outside the country of *subsequently* naturalized parents. By virtue of R. S. Sec. 2172, 8 U. S. C. A. Sec. 7 and Sec. 5 of the Act of March 2, 1907, 8 U. S. C. A. Sec. 8, under the former, a foreign-born child dwelling in the United States at the time of the naturalization of the parent automatically becomes a citizen * * *". (Italics added.)

As a result of the decision of the Court of Appeals, the petitioner is not only deprived of his citizenship, but will be technically subject to deportation. "To take away a man's citizenship deprives him of a right no less precious than life or liberty, indeed of one which today comprehends those rights and almost all others" *Klapprott* v. *United States*, 69 Sup. Ct. 384, 391 (1949).

4. There is obviously a patent ambiguity in the Naturalization Act of 1906 which did not provide for situations wherein derivative rights of citizenship accrued in contrast to the provisions of Sec. 338 (d) of the Nationality Act of 1940, 8 U. S. C. A. 738 (d) which specifically validates such derivative status. The ambiguity of the Naturalization Act of 1906, which has given rise to the paradoxical situation in which the petitioner finds himself a man without a country, after approximately 25 years of allegiance, earnest devotion and fidelity to the principles and institutions of this country should be settled by this Court.

Needless to say the citizenship rights of petitioner are prized by him and are paramount to any possession that he holds dear. The consequences of the loss of petitioner's citizenship are more serious than a taking of his property or the imposition of a fine or penalty. *In its effect on petitioner* the construction of the Act of 1906 decided by the Court of Appeals is *ex post facto* in nature and spirit if not within the letter of such legislation. See *Luria* v. *United States, supra,* p. 24; *Johannessen* v. *United States, supra,* pp. 241, 242; *Thompson* v. *Utah,* 170 U. S. 351; and *Cummings* v. *Missouri,* 4 Wall. 277, 321; *Ex parte Garland,* 4 Wall. 333, 378.

As was so well expressed by Chief Justice Hughes in *Perkins* v. *Elg, supra,* p. 337, in discussing the effect of the treaty between Sweden and the United States and the ambiguity respecting certain rights belonging to a child with its serious consequences on the citizenship of the child, "if the abrogation of the right had been in contemplation it would naturally have been the subject of a provision suitably explicit. *Rights of citizenship are not to be destroyed by an ambiguity.*" (Italics added.)

It is submitted that if there is an ambiguity in the Act of 1906, vested rights of citizenship should not be destroyed by such an ambiguity.

WHEREFORE, it is respectfully requested that this petition for a writ of certiorari should be granted.

Respectfully submitted,

WILLIAM CANTON and JOSEPH F. RUGGIERI,
Attorneys for Petitioner.